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16
17 **UNITED STATES DISTRICT COURT**

18 **DISTRICT OF NEVADA**

19 Cung Le, Nathan Mr. Quarry, Jon Fitch, Brandon
20 Vera, Luis Javier Vazquez, and Kyle Kingsbury,
on behalf of themselves and all others similarly
21 situated,

22 Plaintiffs,

23 v.

24 Zuffa, LLC, d/b/a Ultimate Fighting
Championship and UFC,

25 Defendant

26 No.: 2:15-cv-01045-RFB-(PAL)

27 **ZUFFA, LLC'S MOTION TO SEAL
PORTIONS OF ZUFFA'S
OPPOSITION TO PLAINTIFFS'
MOTION TO COMPEL
DEFENDANT TO PRODUCE A
LOG OF COMMUNICATIONS
FOR DANA WHITE'S
DISCOVERABLE TELEPHONE
NUMBERS AND ELECTRONIC
COMMUNICATION DEVICES
AND DIRECTING DEFENDANT
TO SUBMIT AN INVENTORY OF
ELECTRONIC
COMMUNICATION DEVICES
AND RELATED DOCUMENTS
(ECF No. 395)**

1 I. INTRODUCTION

2 Pursuant to the Stipulated Order governing the confidentiality of documents entered by the
 3 Court on February 10, 2016, ECF No. 217 (“Protective Order”) and Rule 26(c) of the Federal Rules
 4 of Civil Procedure, Defendant Zuffa, LLC (“Zuffa”) respectfully requests that the Court order the
 5 Clerk of Court to file under seal those portions of Zuffa’s Opposition to Plaintiffs’ Motion to
 6 Compel Defendant to Produce a Log of Communications for Dana White’s Discoverable Telephone
 7 Numbers and Electronic Communication Devices and Directing Defendant to Submit an Inventory
 8 of Electronic Communication Devices (ECF No. 396) (“Opposition”) as redacted in the public
 9 version of that document. Zuffa further respectfully requests that the Court order the Clerk of Court
 10 to file under seal those exhibits or portions thereof to the Motion to Compel specified below.¹ This
 11 Motion is accompanied by the Declaration of Stacey K. Grigsby in Support of Zuffa’s Motion to
 12 Seal Portions of Zuffa’s Opposition to Plaintiffs’ Motion to Compel Defendant to Produce a Log of
 13 Communications for Dana White’s Discoverable Telephone Numbers and Electronic
 14 Communication Devices and Directing Defendant to Submit an Inventory of Electronic
 15 Communication Devices and Related Documents (“Grigsby Sealing Declaration”).

16 The Protective Order in this case provides for the filing of documents under seal where a
 17 document or portions thereof contain Confidential or Highly Confidential Information. ECF No.
 18 217, ¶ 14.3. As described fully below, Zuffa seeks to file under seal three categories of documents.
 19 First, Zuffa seeks to file under seal portions of exhibits containing trade secret information from one
 20 of Zuffa’s vendors involved with extracting text messages. Second, Zuffa seeks to file under seal
 21 portions of exhibits that reveal personal information of current and former Zuffa employees. Third,
 22 Zuffa seeks to file under seal an exhibit containing Zuffa’s confidential business information
 23 regarding Zuffa’s confidential internal business operations.

24 II. LEGAL STANDARD

25 Documents filed in connection with a non-dispositive motion may be sealed if the party

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 27 ¹ All exhibits referenced in this Motion refer to exhibits to the Declaration of Stacey K. Grigsby in
 28 Support of Zuffa’s Opposition to Zuffa’s Opposition to Plaintiffs’ Motion to Compel Defendant to
 Produce a Log of Communications for Dana White’s Discoverable Telephone Numbers and
 Electronic Communication Devices and Directing Defendant to Submit an Inventory of Electronic
 Communication Devices and Related Documents (“Grigsby Decl.”).

1 seeking to seal the documents makes a “particularized showing” under the “good cause” standard of
 2 Rule 26(c). *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (citation and
 3 internal quotation marks omitted); *see also Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 678 (9th
 4 Cir. 2010). The Court has “broad latitude” under Rule 26(c) “to prevent disclosure of materials for
 5 many types of information, including, but not limited to, trade secrets or other confidential research,
 6 development, or commercial information.” *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1211
 7 (9th Cir. 2002) (citations omitted).

8 There is good cause to seal documents containing confidential business assessments and
 9 strategy, information and communications containing financial terms, incentives and negotiations
 10 over contract terms where such information could cause competitive harm if disclosed publicly. *See*
 11 *Selling Source, LLC v. Red River Ventures, LLC*, No. 2:09-cv-01491-JCM-GWF, 2011 WL
 12 1630338, at *2 (D. Nev. Apr. 29, 2011) (finding good cause to seal information regarding finances,
 13 contractual agreements and information regarding particular arrangements with customers); *Aevoe*
 14 *Corp. v. AE Tech. Co.*, No. 2:12-cv-00053-GMN-NJK, 2013 WL 2302310, at *2 (D. Nev. May 24,
 15 2013) (finding good cause to seal financial information and business strategies); *Rainbow Bus.*
 16 *Solutions v. Merch. Servs.*, 2013 U.S. Dist. LEXIS 67190, at *9 (N.D. Cal. May 10, 2013) (finding
 17 compelling reasons to seal “particular information about the party’s contractual agreements . . . the
 18 public disclosure of which would impede its ability to negotiate with business partners and to stay
 19 competitive in the marketplace”).

20 In addition, sealing is appropriate for documents that are “sources of business information
 21 that might harm a litigant’s competitive standing,” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589,
 22 598 (1978) (citations omitted); the “release of trade secrets,” *Kamakana*, 447 F.3d at 1179 (citing
 23 *Nixon*, 435 U.S. at 598); and “the release of . . . information [that] would result in an invasion of the
 24 privacy interests of third parties.” *GoDaddy.com LLC v. RPost Commc’ns Ltd.*, No. CV-14-00126-
 25 PHX-JAT, 2016 WL 1158851, at *5 (D. Ariz. Mar. 24, 2016), on *reconsideration in part*, No. CV-
 26 14-00126-PHX-JAT, 2016 WL 1274120 (D. Ariz. Mar. 31, 2016). Sealing is also appropriate for
 27 documents that contain “confidential and commercially sensitive information,” including licensing
 28 agreements containing “pricing terms, royalty rates, and guaranteed minimum payment terms” meet

1 the “compelling reasons” standard and are properly filed under seal, *In re Elec. Arts, Inc.*, 298 F.
 2 App’x 568, 569 (9th Cir. 2008), as well as for documents containing sales volume and pricing
 3 information, sensitive information about a company’s products and processes not typically available
 4 to the public, customer identity information, and capital expenditure and development cost
 5 information, e.g. *Triquet Semiconductor, Inc. v. Avago Techs Ltd.*, No. CV 09-1531-PHX-JAT,
 6 2011 WL 6182346, at *2-*8 (D. Ariz. Dec. 13, 2011).

7 III. ARGUMENT

8 A. Confidential and Proprietary Pricing Information in Vendor Declaration.

9 Zuffa seeks to redact a small portion of Exhibit I that reveals confidential and proprietary
 10 pricing information for the vendor Zuffa engaged to extract text messages from Dana White’s phone.
 11 The vendor keeps this pricing information strictly confidential. Grigsby Sealing Decl. ¶ 6. This
 12 trade secret pricing information is information that, if released, could cause competitive harm if
 13 released publicly.

14 B. Zuffa Current and Former Employee Cellular Phone Information and E-mail
 15 Addresses.

16 Zuffa seeks to redact the email addresses of all current and former Zuffa employees from
 17 Exhibit F, as well as all but the last two numbers of Mr. White’s cellular telephones, to protect their
 18 privacy. The final two digits of each of Mr. White’s phone numbers are sufficient to uniquely
 19 identify each of the phones at issue in this motion. Zuffa further seeks to redact the e-mail addresses
 20 of all current and former employees, including Mr. White, from Exhibit C to protect the privacy of
 21 those e-mail addresses.

22 C. Private Personal Information of Zuffa Employee.

23 Zuffa seeks to file Exhibit H under seal. Exhibit H contains highly confidential information
 24 regarding the personal and family information of a Zuffa employee. Exhibit H describes the
 25 personal and private practices of the Zuffa employee with respect to his communications as well as
 26 information about the employee’s family.

27 D. Zuffa’s Confidential Internal Business Operations.

28 Zuffa seeks to file Exhibit B under seal as Exhibit B is a highly confidential document that
 was sent from Zuffa’s Chief Legal Officer to Zuffa employees. This is the type of legal

1 communication to Zuffa employees that Zuffa does not disclose publicly and treats as confidential.

2 *See* Grigsby Decl. ¶ 8.

3 Zuffa also seeks to redact a portion of Exhibit G that are subject to confidential agreements
4 between Zuffa and two of its vendors. These agreements provide for the confidentiality of the
5 engagement between Zuffa and its vendors and permitting redaction of the identities of the vendors
6 would promote the interests of third parties in having their privacy and business interests protected.

7 IV. CONCLUSION

8 Zuffa respectfully requests that the Court find that Zuffa has made the requisite particularized
9 showing of good cause sufficient to justify sealing of the documents, or portions thereof, listed
10 above.

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1 Dated: May 24, 2017

Respectfully Submitted,

2 BOIES SCHILLER FLEXNER LLP

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4 By: /s/ Stacey K. Grigsby

5 Stacey K. Grigsby

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Ultimate Fighting Championship and UFC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **Zuffa's Motion to Seal Portions of Zuffa's Opposition to Plaintiffs' Motion to Compel Defendant to Produce a Log of Communications for Dana White's Discoverable Telephone Numbers and Electronic Communication Devices and Directing Defendant to Submit an Inventory of Electronic Communication Devices and Related Documents (ECF No. 395)** was served on May 24, 2017 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Michael Kim

Michael Kim, an Employee of Boies Schiller Flexner LLP